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FEDERAL COMMUNICATIONS COMMISSION

 **Cincinnati Bell Telephone**
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David L. Meier
Director
Regulatory Affairs

July 25, 1997

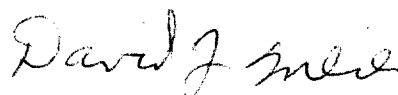
Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street NW Room 222
Washington DC 20554

In the Matter of:)
)
MCI TELECOMMUNICATIONS)
CORPORATION) RM 9108
)
Billing and Collection Services Provided)
By Local Exchange Carriers for Non-)
Subscribed Interexchange Services)

Dear Mr. Caton,

Enclosed are an original and four copies, plus two additional public copies of the Comments of Cincinnati Bell Telephone Company in the above referenced proceeding. A duplicate original copy of this letter and attached Comments is also provided. Please date stamp this as acknowledgment of its receipt and return it. Questions regarding these Comments may be directed to Patricia Rupich at the above address or by telephone on (513) 397-6671.

Sincerely,



David L. Meier

Enclosure

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Before the
FEDERAL COMMUNICATIONS COMMISSION

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OFFICE OF THE SECRETARY

In the Matter of)
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MCI TELECOMMUNICATIONS)
CORPORATION)
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Billing and Collection Services Provided)
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Subscribed Interexchange Services)
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COMMENTS OF
CINCINNATI BELL TELEPHONE COMPANY

I. INTRODUCTION

On May 19, 1997, MCI Telecommunications Corporation ("MCI") filed a Petition for Rulemaking regarding the provisioning of billing and collection services by local exchange carriers ("LECs") to certain interexchange carriers. In its Petition, MCI calls upon the Commission to initiate a rulemaking to craft an appropriate nondiscrimination rule that can be equally applied to ILEC and CLEC provision of billing and collection services offered to providers of interexchange services to non-subscribed customers.¹ While MCI states that the purpose for its petition is not to call for a return to the Commission's regulation of billing and collection, CBT submits that such an outcome is exactly what will result from MCI's request.

CBT submits that the rulemaking proceeding requested by MCI is not necessary, and is not supported by the Commission's precedents, given that the Commission has rightly concluded that billing and collection are not regulated by the Commission under Title II of

¹ MCI Petition, at p. 1.

the Communications Act.² LECs are not required to provide billing and collection services at all. There are various valid business reasons why a LEC might or might not choose to provide billing and collection services to any carrier, including MCI. These business reasons, as outlined below, have nothing to do with whether or not the carrier seeking billing and collection services is in competition with the LEC's affiliate. CBT, therefore, files these comments in opposition to MCI's Petition for Rulemaking and to the proposed regulatory scheme contained in MCI's Petition.

II. DISCUSSION

CBT currently provides billing and collection services to a variety of IXC's and other service providers pursuant to contracts negotiated between the parties. CBT is not obligated to provide such services, but rather has chosen, to date, to enter into contractual arrangements whereby it provides these billing and collection services. As the number of entities with whom CBT has contracted to provide such services have grown, so have the

² In its Petition, MCI states:

Some LECs are proposing to re-write their billing and collection agreements in ways that would greatly increase the cost of these services for IXC's, and backing up these proposals with a "take it or leave it" negotiating stance. While these LECs are not compelled to explain their motivation for this position, it is evident to MCI that these efforts, including the threat of total cut-offs, constitute nothing more or less than an attempt to secure an unparalleled competitive advantage as these LECs enter interexchange markets.

Id. at p. 2. What this statement ignores is that the decision by a LEC to offer billing and collection services to any IXC or any other party is a business decision by the LEC.

problems experienced by CBT in policing the conduct of these carriers pursuant to the contract.

In many circumstances, these carriers have sent inappropriate, incorrect, inaccurate, or unlawful billing messages to CBT. CBT then has unknowingly included these charges on the customer's bills, which has caused great frustration and confusion for CBT's local exchange customers. When CBT has referred these customers to the Customer Services Department for many of these providers, the customers have either received no response, been treated rudely, had no resolution to the dispute or were referred back to CBT as the billing agent. Such conduct has resulted in confusion and frustration for CBT's customers and could negatively impact CBT's relationship with its own customers.

CBT's most important relationship is with its local exchange customers, and its most important asset is its good name and reputation in its dealing with those customers. CBT must be allowed to take steps to ensure that the parties with whom it has billing and collection agreements adhere to strict standards of customer service, so as to protect this relationship. If certain of these carriers persist in conduct that does damage to these customers and/or to CBT's reputation for outstanding customer service, CBT must be allowed to impose standards to correct this conduct or to terminate the contractual relationship if the conduct persists. In fact, since CBT is not required to provide these services, CBT has the right to terminate these contractual relationship, pursuant to their terms, if it simply decides to exit the business of providing billing and collection services. In its petition, MCI ignores the legitimate business and public policy reasons for which a LEC

might decide not to contract to provide billing and collection services on behalf of certain service providers.

No LEC is required by law to provide billing and collection services at all to any IXC, yet MCI asserts that no feasible alternatives exist to LEC-provided billing and collection services. Surely MCI does not mean to argue that if all LECs made the business decision not to provide billing and collection services, these carriers would have no available mechanism to bill their customers. In fact, MCI admits that the IXC could do the billing themselves, or contract with a non-communications company to provide billing and collection, or could work for the creation of a billing and collection clearinghouse.³ MCI argues that these alternatives are not feasible because of the expense involved in pursuing billing and collection through one of these other avenues.⁴

MCI acknowledges that the Billing Name and Address ("BNA") information necessary for the provision of billing and collection is available pursuant to the LECs' tariff offerings, so that the information necessary to pursue one of these alternatives to LEC-provided billing and collection are available.⁵ MCI simply asserts that it is too expensive for service providers to take the available BNA information from the LECs and perform their own billing and collection functions.⁶ In effect, MCI appears to argue that LECs should be required to subsidize billing and collection functions, even when these services are not

³ Id. at pp. 6-10.

⁴ Id.

⁵ Id. at pp. 8-9.

⁶ Id.

required by law to be provided and have been defined by the Commission as beyond the Commission's regulatory authority under Title II of the Communications Act.⁷ MCI would apparently take the position that even if the provisioning of billing and collection services results in damage to the LEC's customers and its reputation due to the conduct of the service provider, the LEC should be required to continue to provide the service. This is neither good public policy, nor good business.

The Commission, in its order detariffing billing and collection services, concluded that because billing and collection services were subject to competition, they were not a common carrier communications service subject to regulation by the Commission subject to Title II of the Communications Act.⁸ MCI asserts in its Petition that the Commission should exercise its Title I jurisdiction and now regulate a service it has determined to be competitive and not subject to regulation.⁹ In addressing when the Commission should exercise its Title I jurisdiction over billing and collection services in a case involving the refusal by IXC's to provide billing and collection services, the Commission looked to the following factors:

- 1) the lack of alternative billing and collection services;
- 2) the unreasonableness of the discrimination in denying access to the billing and collection services;
- 3) the need to protect the First Amendment and freedom of expression;

⁷ Detariffing of Billing and Collection Services, 102 FCC 2d 1150, *recon. denied*, 1 FCC Rcd 445 (1986).

⁸ Detariffing of Billing and Collection Services, 106 FCC 2d 1150, *recon. denied*, 1 FCC Rcd 445 (1986).

⁹ Petition at pp. 11-14.

- 4) the encouragement and promotion of new and innovative services and technologies.¹⁰

In its Petition, MCI only raises two of these issues as a basis for the exercise of the Commission's Title I jurisdiction. As addressed above, MCI admits that there are alternative billing and collection services available to service providers. Further, MCI asserts that the only reason for LECs to make a decision to terminate billing and collection agreements is because they are acting in an anti-competitive manner. Such an assertion completely ignores the other business reasons outlined by CBT above. In the cases where the conduct of service providers cannot be effectively policed by the LEC providing billing and collection services, the decision to terminate the agreement is not arbitrary, serves to protect the LEC from damage to its reputation, and serves to protect the customers of the LEC from confusion and frustration.¹¹ Such a determination is clearly reasonable, and has no relation to whether a LEC provides billing and collection services to any particular providers, including the LEC's own affiliate, and not to other providers. Where a would be provider has evidence that a LEC has refused to enter into a contract, or terminating an existing agreement, solely for anti-competitive reasons, there are other remedial avenues available for that provider either under contract principles or antitrust principles. No reason exists for the Commission to re-regulate the billing and collection arena.

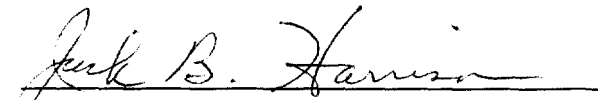
¹⁰ Audio Communications, Inc. - Petition for a Declaratory Ruling that the 900 Service Guidelines of U.S. Sprint Communications Co. Violate Sections 201(a) and 202(a) of the Communications Act, 8 FCC Rcd 8697, 8700 (1993).

¹¹ Id. at 8700-02. See also, Carlin Communications v. Mountain States Tel. & Tel., 827 F.2d 1291 (9th Cir. 1987), articulating a standard of reasonableness that allows for discrimination based on legitimate business classifications.

III. CONCLUSION

For all the foregoing reasons, CBT respectfully requests the Commission to deny MCI's Petition for Rulemaking.

Respectfully submitted,



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